



April 3, 2009

ENGROSSED SENATE BILL No. 21

DIGEST OF SB 21 (Updated March 31, 2009 11:33 am - DI 92)

Citations Affected: IC 25-37.5; IC 35-41; IC 35-43; noncode.

Synopsis: Theft of metal. Expands the definition of "valuable metal", and removes the provision exempting valuable metal transactions under \$100 from reporting requirements. Specifies that the term "valuable metal" does not apply to a beverage can. Requires a valuable metal dealer to photograph the person from whom the dealer purchases valuable metal and the valuable metal being purchased and to record the source of the valuable metal. Requires the superintendent of the state police to notify valuable metal dealers of valuable metals that are particularly susceptible to theft. Defines "key facility" and makes trespassing a Class D felony if it is committed on a facility belonging to a key facility or public utility. Raises theft and receiving stolen property to a Class C felony if the stolen property is a valuable metal taken from a key facility, public utility, railroad, or highway department and the absence of the metal creates a substantial risk of bodily injury to a person. Requires the law enforcement training board to adopt rules to provide, as part of the inservice training program for police officers, training concerning the theft of valuable metals and the regulation of valuable metal dealers. Makes a technical correction. Repeals obsolete provisions relating to the definition of valuable metals. (The introduced version of this bill was prepared by the sentencing policy study committee.)

Effective: July 1, 2009.

Tallian, Steele, Broden, Rogers

(HOUSE SPONSORS — LAWSON L, FOLEY, GOODIN)

January 7, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

January 14, 2009, amended, reported favorably — Do Pass.

January 22, 2009, read second time, ordered engrossed.

January 23, 2009, engrossed.

January 27, 2009, read third time, passed. Yeas 49, nays 1.

HOUSE ACTION

February 25, 2009, read first time and referred to Committee on Courts and Criminal Code.

March 19, 2009, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to House Rule 127.

April 2, 2009, reported — Do Pass.

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April 3, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 21

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 25-37.5-1-0.2 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2009]: **Sec. 0.2. As used in this chapter, "core**
4 **buyer" means a person engaged in the business of purchasing or**
5 **acquiring small component motor vehicle parts for resale,**
6 **including catalytic converters, automobile radiators, and batteries.**
7 SECTION 2. IC 25-37.5-1-0.5 IS ADDED TO THE INDIANA
8 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2009]: **Sec. 0.5. As used in this chapter,**
10 **"metal bossie" means a metal four (4) wheel cart used to transport**
11 **or sell food products that are stored in crates, shells, or trays.**
12 SECTION 3. IC 25-37.5-1-1, AS AMENDED BY P.L.63-2008,
13 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2009]: Sec. 1. (a) When used in this chapter, "valuable metal"
15 means any product made of ~~ferrous metal or nonferrous~~ metal that is
16 readily ~~used or useable~~:
17 (†) by a public utility, a railroad, a county, city, or state highway

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department, a public or private school, or a postsecondary educational institution; or

(2) on residential or commercial property;

may be resold. The term includes metal bosses and small component motor vehicle parts. The term does not include a beverage can.

(b) As used in this chapter, "valuable metal dealer" means any individual, firm, corporation, limited liability company, or partnership engaged in the business of purchasing and reselling valuable metal either at a permanently established place of business or in connection with a business of an itinerant nature, including junk shops, junk yards, junk stores, auto wreckers, scrap metal dealers or processors, salvage yards, collectors of or dealers in junk, and junk carts cars or trucks. **The term includes a core buyer. The term does not include a person who purchases a vehicle and obtains title to the vehicle.**

(c) As used in this chapter, "purchase" means acquiring a valuable metal product or products by a valuable metal dealer in a single transaction of one hundred dollars (\$100) or more for a consideration, but does not include purchases between scrap metal processing facilities (as defined in IC 8-23-1-36).

SECTION 4. IC 25-37.5-1-2, AS AMENDED BY P.L.170-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except as provided in section 5 of this chapter, every valuable metal dealer in this state shall enter on forms provided by the state police department for each purchase of valuable metal the following information:

- (1) The name and address of the dealer.
- (2) The date and place of each purchase.
- (3) The name, address, age, and driver's license number or Social Security number of the person or persons from whom the valuable metal was purchased.
- (4) The valuable metal dealer shall verify the identity of the person from whom the valuable metal was purchased by use of a government issued photographic identification. The dealer shall enter on the form the type of government issued photographic identification used to verify the identity of the person from whom the valuable metal was purchased, together with the:
 - (A) name of the government agency that issued the photographic identification; and
 - (B) identification number present on the government issued photographic identification.
- (5) The motor vehicle license number of the vehicle or

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conveyance on which the valuable metal was delivered to the dealer.

(6) The price paid for the metal.

(7) A description and weight of the valuable metal purchased.

(8) The source of the valuable metal.

(9) The photograph described in subsection (b).

After entering the information required in this subsection, the valuable metal dealer shall require the person or persons from whom the valuable metal is purchased to sign the form and verify its accuracy.

(b) In addition to collecting the information described in subsection (a), a valuable metal dealer shall take a photograph of:

(1) the person from whom the valuable metal is being purchased; and

(2) the valuable metal.

~~(b)~~ **(c)** A valuable metal dealer shall make and retain a copy of the government issued photographic identification described under subsection (a)(4) used to verify the identity of the person from whom valuable metal was purchased **and the photograph described in subsection (b).** However, a valuable metal dealer is not required to make a copy of a government issued photographic identification used under subsection (a)(4) to verify the identity of the person from whom valuable metal is purchased if the valuable metal dealer has retained a copy of a person's government issued photographic identification from a prior purchase from the person by the valuable metal dealer.

~~(c)~~ **(d)** The completed form, **the photograph described in subsection (b),** and the copy of the government issued photographic identification described in subsection ~~(b)~~ **(c)** shall be kept in a separate book or register by the dealer and shall be retained for a period of two (2) years. ~~Such~~ **This** book or register shall be made available for inspection by any law enforcement official at any time.

~~(d)~~ **(e)** A valuable metal dealer may not accept a damaged or an undamaged metal beer keg if either of the following applies:

(1) The keg is clearly marked as the property of a brewery manufacturer.

(2) The keg's identification markings have been made illegible.

SECTION 5. IC 25-37.5-1-3, AS AMENDED BY P.L.3-2008, SECTION 206, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. The superintendent of the state police department may adopt rules under IC 4-22-2 as may be necessary to administer and enforce the provisions and intent of this chapter. The superintendent shall also prepare and distribute a list to

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each valuable metal dealer describing

(1) valuable metal products of interest to public utilities, railroads, county, city, or state highway departments, public or private schools, or a postsecondary educational institution; and

(2) valuable metal products of interest for use on residential or commercial property.

that are particularly susceptible to theft.

SECTION 6. IC 35-41-1-16.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 16.5. "Key facility" means any of the following:**

(1) A chemical manufacturing facility.

(2) A refinery.

(3) An electric utility facility, including:

(A) a power plant;

(B) a power generation facility peaker;

(C) an electric transmission facility;

(D) an electric station or substation; or

(E) any other facility used to support the generation, transmission, or distribution of electricity.

However, the term does not include electric transmission land or right-of-way that is not completely enclosed, posted, and maintained by the electric utility.

(4) A water intake structure or water treatment facility.

(5) A natural gas utility facility, including:

(A) an age station;

(B) a compressor station;

(C) an odorization facility;

(D) a main line valve;

(E) a natural gas storage facility; or

(F) any other facility used to support the acquisition, transmission, distribution, or storage of natural gas.

However, the term does not include gas transmission pipeline property that is not completely enclosed, posted, and maintained by the natural gas utility.

(6) A gasoline, propane, liquid natural gas (LNG), or other fuel terminal or storage facility.

(7) A transportation facility, including, but not limited to, a port, railroad switching yard, or trucking terminal. However, the term does not include a railroad track that is not part of a railroad switching yard.

(8) A pulp or paper manufacturing facility.

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(9) A pharmaceutical manufacturing facility.

(10) A hazardous waste storage, treatment, or disposal facility.

(11) A telecommunications facility, including a central office or cellular telephone tower site.

(12) A facility:

(A) that is substantially similar to a facility, structure, or station listed in this section; or

(B) whose owner or operator is required to submit a risk management plan under the federal Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (42 U.S.C. 7412(r)).

SECTION 7. IC 35-43-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person who:

(1) not having a contractual interest in the property, knowingly or intentionally enters the real property of another person after having been denied entry by the other person or that person's agent;

(2) not having a contractual interest in the property, knowingly or intentionally refuses to leave the real property of another person after having been asked to leave by the other person or that person's agent;

(3) accompanies another person in a vehicle, with knowledge that the other person knowingly or intentionally is exerting unauthorized control over the vehicle;

(4) knowingly or intentionally interferes with the possession or use of the property of another person without the person's consent;

(5) not having a contractual interest in the property, knowingly or intentionally enters the dwelling of another person without the person's consent; or

(6) knowingly or intentionally:

(A) travels by train without lawful authority or the railroad carrier's consent; and

(B) rides on the outside of a train or inside a passenger car, locomotive, or freight car, including a boxcar, flatbed, or container without lawful authority or the railroad carrier's consent;

commits criminal trespass, a Class A misdemeanor. However, the offense is a Class D felony if it is committed on a scientific research facility, **on a key facility, on a facility belonging to a public utility (as defined in IC 32-24-1-5.9(a))**, on school property, or on a school bus or the person has a prior unrelated conviction for an offense under

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1 this section concerning the same property.

2 (b) A person has been denied entry under subdivision (a)(1) of this
3 section when the person has been denied entry by means of:

4 (1) personal communication, oral or written; or

5 (2) posting or exhibiting a notice at the main entrance in a manner
6 that is either prescribed by law or likely to come to the attention
7 of the public.

8 (c) Subsections (a) and (b) do not apply to the following:

9 (1) A passenger on a train.

10 (2) An employee of a railroad carrier while engaged in the
11 performance of official duties.

12 (3) A law enforcement officer, firefighter, or emergency response
13 personnel while engaged in the performance of official duties.

14 (4) A person going on railroad property in an emergency to rescue
15 a person or animal from harm's way or to remove an object that
16 the person reasonably believes poses an imminent threat to life or
17 limb.

18 (5) A person on the station grounds or in the depot of a railroad
19 carrier:

20 (A) as a passenger; or

21 (B) for the purpose of transacting lawful business.

22 (6) A:

23 (A) person; or

24 (B) person's:

25 (i) family member;

26 (ii) invitee;

27 (iii) employee;

28 (iv) agent; or

29 (v) independent contractor;

30 going on a railroad's right-of-way for the purpose of crossing at a
31 private crossing site approved by the railroad carrier to obtain
32 access to land that the person owns, leases, or operates.

33 (7) A person having written permission from the railroad carrier
34 to go on specified railroad property.

35 (8) A representative of the Indiana department of transportation
36 while engaged in the performance of official duties.

37 (9) A representative of the federal Railroad Administration while
38 engaged in the performance of official duties.

39 (10) A representative of the National Transportation Safety Board
40 while engaged in the performance of official duties.

41 SECTION 8. IC 35-43-4-2 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person who

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1 knowingly or intentionally exerts unauthorized control over property of
 2 another person, with intent to deprive the other person of any part of its
 3 value or use, commits theft, a Class D felony. However, the offense is
 4 a Class C felony if:

5 (1) the fair market value of the property is at least one hundred
 6 thousand dollars (\$100,000); or

7 (2) the property that is the subject of the theft is a valuable
 8 metal (as defined in IC 25-37.5-1-1) and:

9 (A) relates to transportation safety;

10 (B) relates to public safety; or

11 (C) is taken from a:

12 (i) hospital or other health care facility;

13 (ii) telecommunications provider;

14 (iii) public utility (as defined in IC 32-24-1-5.9(a)); or

15 (iv) key facility;

16 and the absence of the property creates a substantial risk of
 17 bodily injury to a person.

18 (b) A person who knowingly or intentionally receives, retains, or
 19 disposes of the property of another person that has been the subject of
 20 theft commits receiving stolen property, a Class D felony. However, the
 21 offense is a Class C felony if:

22 (1) the fair market value of the property is at least one hundred
 23 thousand dollars (\$100,000); or

24 (2) the property that is the subject of the theft is a valuable
 25 metal (as defined in IC 25-37.5-1-1) and:

26 (A) relates to transportation safety;

27 (B) relates to public safety; or

28 (C) is taken from a:

29 (i) hospital or other health care facility;

30 (ii) telecommunications provider;

31 (iii) public utility (as defined in IC 32-24-1-5.9(a)); or

32 (iv) key facility;

33 and the absence of the property creates a substantial risk of
 34 bodily injury to a person.

35 SECTION 9. THE FOLLOWING ARE REPEALED [EFFECTIVE
 36 JULY 1, 2009]: IC 25-37.5-1-0.3; IC 25-37.5-1-0.6.

37 SECTION 10. [EFFECTIVE JULY 1, 2009] (a) The law
 38 enforcement training board shall adopt rules under IC 4-22-2
 39 to provide, as part of the mandatory inservice training program for
 40 police officers under IC 5-2-1-9(g), training in the prevention and
 41 investigation of the theft of valuable metal (as defined in
 42 IC 25-37.5-1-1) and enforcement of the laws relating to the theft of

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1 valuable metals, including the laws regulating valuable metal
2 dealers.

3 (b) This SECTION expires June 30, 2011.

4 SECTION 11. [EFFECTIVE JULY 1, 2009] IC 35-43-4-2 and
5 IC 35-43-2-2, both as amended by this act, apply only to crimes
6 committed after June 30, 2009.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 21, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 17, after "parts." insert **"The term does not include a beverage can."**.

Page 2, line 41, delete "scrap" and insert **"valuable"**.

Page 4, between lines 1 and 2, begin a new paragraph and insert:

"SECTION 5. IC 35-41-1-16.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16.5. "Key facility" means any of the following:

- (1) A chemical manufacturing facility.**
- (2) A refinery.**
- (3) An electric utility facility, including:**
 - (A) a power plant;**
 - (B) a power generation facility peaker;**
 - (C) an electric transmission facility;**
 - (D) an electric station or substation; or**
 - (E) any other facility used to support the generation, transmission, or distribution of electricity.**

However, the term does not include electric transmission land or right-of-way that is not completely enclosed, posted, and maintained by the electric utility.

- (4) A water intake structure or water treatment facility.**

- (5) A natural gas utility facility, including:**

- (A) an age station;**
 - (B) a compressor station;**
 - (C) an odorization facility;**
 - (D) a main line valve;**
 - (E) a natural gas storage facility; or**
 - (F) any other facility used to support the acquisition, transmission, distribution, or storage of natural gas.**
- However, the term does not include gas transmission pipeline property that is not completely enclosed, posted, and maintained by the natural gas utility.**

- (6) A gasoline, propane, liquid natural gas (LNG), or other fuel terminal or storage facility.**

- (7) A transportation facility, including, but not limited to, a port, railroad switching yard, or trucking terminal. However,**

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the term does not include a railroad track that is not part of a railroad switching yard.

(8) A pulp or paper manufacturing facility.

(9) A pharmaceutical manufacturing facility.

(10) A hazardous waste storage, treatment, or disposal facility.

(11) A telecommunications facility, including a central office or cellular telephone tower site.

(12) A facility:

(A) that is substantially similar to a facility, structure, or station listed in this section; or

(B) whose owner or operator is required to submit a risk management plan under the federal Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (42 U.S.C. 7412(r))."

Page 4, line 29, after "facility," insert "on a key facility,".

Page 6, line 2, delete "or".

Page 6, line 3, after "IC 32-24-1-5.9(a);" insert "or

(iv) key facility;".

Page 6, line 18, delete "or".

Page 6, line 19, after "IC 32-24-1-5.9(a);" insert "or

(iv) key facility;".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 21 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 10, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 21, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 2. IC 25-37.5-1-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 0.5. As used in this chapter, "metal bossie" means a metal four (4) wheel cart used to transport

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or sell food products that are stored in crates, shells, or trays."

Page 1, line 16, after "includes" insert "**metal bossies and**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 21 as printed January 15, 2009.)

PIERCE, Chair

Committee Vote: yeas 12, nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 21, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

CRAWFORD, Chair

Committee Vote: yeas 21, nays 3.

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